3618

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Attorney Docket No. 26.2.A41/B/USA

In re Application of:	)	
	)	
Jackie R. Gust et al.	)	
	)	
Serial No. 09/480,044	)	
	)	
Filed January 10, 2000	)	Group Art Unit 3618
	)	
For ELECTRIC DRIVE RIDING MOWER	)	Examiner M. Britton
	)	

REQUEST FOR EXTENSION OF TIME, AUTHORIZATION TO CHARGE DEPOSIT ACCOUNT and RESPONSE TO OFFICE ACTION

Assistant Commissioner for Patents
Washington, D.C. 20231

Sir:

Request for Extension of Time

Pursuant to 37 C.F.R. §1.136(a), it is requested that the time for responding to the Office Action of April 11, 2000, now set to expire on July 11, 2000, be extended for three (3) months, to expire on October 11, 2000.

Authorization to Charge Deposit Account

Please charge the $870 fee for the requested extension of time, or any additional fees of any type that may be re-

Certificate under 37 C.F.R. 1.8. I hereby certify that this correspondence is being deposited with sufficient postage with the U.S. Postal Service, as First Class Mail, in an envelope addressed to: Assistant Commissioner for Patents, Washington, D.C. 20231 on 10/11/2000.

James W. Miller

quired, or credit any overpayment, to Deposit Account No. 20-1315. A duplicate copy of this sheet is enclosed.

Response to Office Action

In response to the Office Action dated April 11, 2000, a Declaration under 37 CFR 1.608(a) is being filed herewith. This Declaration asserts that there is a basis upon which Applicants are entitled to a judgment relative to U.S. Patent 5,794,422 to Reimers et al., for the purpose of allowing the Examiner to determine whether an interference should be declared between this application and the Reimers et al. patent.

As Reimers et al. is the primary reference used in all of the Examiner's rejections, the submission of this Declaration is believed to constitute a full and proper response to the outstanding Office Action. If the Examiner feels that an interference should not be declared, then the Applicants would be able to proceed by way of a Rule 131 Affidavit to remove Reimers as a reference. However, such a Rule 131 Affidavit has not yet been prepared and filed as it is ineffective when an application appears to be claiming the same invention as an issued patent, which appears to the undersigned attorney to be the case here. Accordingly, with the submission of the Declaration under 37 CFR 1.608(a), the Examiner is now able to proceed to evaluate the question of whether an interference between this application and the Reimers et al. patent.

The Previously Filed IDS

Before an interference is to be declared, the claims subject to the interference must, of course, be allowable to

the Applicants. In this regard, an IDS was filed when the above-identified patent application was filed bringing a prior Unique Mobility/Toro prototype mower to the attention of the Examiner. The Examiner initialled the IDS citation form indicating that this material was considered. However, no rejections were made by the Examiner using the Unique Mobility/Toro prototype mower as a reference.

It is unclear to the undersigned attorney why no rejections were made using the Unique Mobility/Toro prototype mower as a reference since this mower appears to be relevant, and anticipatory, to some of the claimed subject matter. One possiblity is that no rejections were made because the Examiner still had Reimers et al. available to him as a reference in view of the prior lack of the Declaration under 37 CFR 1.608(a), and that once Reimers et al. can no longer be used as a reference the Examiner will then use the Unique Mobility/Toro prototype mower as a reference. Another possiblity is that the Examiner has concluded from the information previously supplied that the Unique Mobility/Toro prototype mower does not qualify as a prior art reference, despite the references to and depictions of this mower by Unique Mobility in various materials over the years. The record simply does not reflect the Examiner's views regarding the Unique Mobility/Toro prototype mower.

In view of the relevance of the Unique Mobility/Toro prototype mower, the Examiner is kindly requested to review the Unique Mobility/Toro prototype mower materials again and to make the record clear as to whether the Unique Mobility/Toro prototype mower is considered to be prior art or not and whether any rejections of any claims will be made based on the Unique Mobility/Toro prototype mower.

Formal Matters

The Examiner's objections to various numbering errors have been dealt with in the attached Request to Approve Drawing Changes.

Respectfully submitted,

October 11, 2000

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